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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10291 7590 10/22/2007 RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610			EXAMINER ROSEN, NICHOLAS D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,156

Applicant(s)

CHU ET AL.

Examiner

Nicholas D. Rosen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36, 38-47 and 49-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36, 38-47, 49-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-36, 38-47, and 49-51 have been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-36 and 38

Claims 1, 2, 3, 4, 5, 6, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 30, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield et al. (U.S. Patent 6,564,208). As per claim 1, Littlefield discloses an information distribution system, comprising: a sponsor subsystem, said sponsor subsystem including: a plurality of listing attributes; a plurality of listings, wherein each listing includes at least one listing

attribute, wherein said plurality of listings include an enhanced listing; and a plurality of format attributes, including a first format attribute and a second format attribute, wherein said first format attribute is associated with said enhanced listing and wherein said second format attribute is associated with at least one said listing that is not said enhanced listing (column 4, lines 24-47, the default settings for font, size, etc., in non-enhanced listings being taken as second format attributes); a user subsystem, said user subsystem including: a request, said user subsystem providing for the receipt of said request; and a response, said user subsystem providing for said response (column 5, lines 12-67; Figures 1A and 1B; the request being implied by the search); and an administrator subsystem, said administrator subsystem including: a response heuristic, said response heuristic providing for selectively identifying a subset of listings to be included in the response, wherein said subset of listings includes said enhanced listing (column 5, lines 12-67; Figure 1B); at least one priority metric, wherein each listing in a response is associated with at least one priority metric (column 2, lines 6-30; note also column 4, lines 15-20); an enhanced display fee, wherein said enhanced display fee is associated with the enhanced listing (column 4, lines 1-14); and a placement heuristic, wherein said placement heuristic provides for arranging said subset of listings within said response, wherein the placement of each said listing is influenced by at least one priority metric associated with the listing (column 2, lines 6-30; column 5, lines 12-67; Figures 1A and 1B). Littlefield does not expressly disclose that the placement of the enhanced listing is not influenced by the enhanced display fee, but does show sample orderings in which enhanced listings are interspersed with unenhanced listings,

unenhanced listings appearing before enhanced listings (Figures 1A and 1B; column 5, lines 12-48); Littlefield also teaches as prior art ordering listings based expected relevance to a user's search (column 2, lines 6-30), with no teaching that in his own invention, the placement of the displayed listings is influenced by the enhanced display fee; and Littlefield teaches that an advantage of his invention is enabling web page owners to compete for the attention of the users of a search engine through enhanced listings ("non-default content"), reducing the incentive to attempt to obtain higher search rankings by manipulation (column 4, lines 15-20). Thus, Littlefield implies that placement of the listings is not influenced by the enhanced display fee, making it obvious for this to be done for at least the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant.

Littlefield does not expressly disclose using a plurality of priority metrics together, but does disclose that the specific techniques for determining a ranking will vary from implementation to implementation (column 2, lines 6-17).

As per claim 2, Littlefield discloses an attribute type, wherein the first format attribute and the second format attribute are of the same attribute type (column 4, lines 24-47, font and font size being examples of attribute type).

As per claim 3, Littlefield discloses that the first format attribute and the second format attribute are mutually exclusive (ibid.; e.g., something in one font is not simultaneously in another font).

As per claim 4, Littlefield discloses a plurality of attribute types including at least: a font size, a font type, and a sound (column 4, lines 24-41; column 6, lines 1-20).

As per claim 5, Littlefield discloses a plurality of enhanced display fees, wherein an enhanced listing can be associated with a plurality of enhancements and thus a plurality of enhanced display fees (column 4, lines 1-9 and 24-41).

As per claim 6, Littlefield discloses a per-hit fee amount, wherein said enhanced display fee is included as part of the per-hit fee amount associated with the enhanced listing (column 4, lines 10-14).

As per claim 10, Littlefield discloses a plurality of responses, including a first response and a second response, wherein the plurality of listings includes a first listing, wherein the first listing is said enhanced listing in said first response, and wherein the first listing is not included in the second response (column 5, lines 12-67; Figures 1A and 1B; note that the listing at the top of Figure 1A is enhanced, and is not included in Figure 1B).

As per claim 13, Littlefield discloses a plurality of types of enhancement and a plurality of fee types corresponding to the types of enhancement (column 4, lines 1-14; column 6, lines 1-20), so that the consequence of different advertisers selecting different enhancements would be the enhanced listings including a first and a second enhanced listing, the plurality of fee types including a first fee type and a second fee

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type, a first enhanced listing being of a first fee type and a second enhanced listing being of a second fee type.

As per claim 14, Littlefield discloses that enhanced listings are associated with enhanced display fees (column 4, lines 1-14). Littlefield does not expressly disclose that the arrangement of listings and enhanced listings is not influenced by the enhanced display fee, but does show sample orderings in which enhanced listings are interspersed with unenhanced listings; unenhanced listings appearing before enhanced listings (Figures 1A and 1B; column 5, lines 12-48); Littlefield also teaches as prior art ordering listings based expected relevance to a user's search (column 2, lines 6-30), with no teaching that in his own invention, the arrangement of the displayed listings is influenced by the enhanced display fee; and Littlefield teaches that an advantage of his invention is enabling web page owners to compete for the attention of the users of a search engine through enhanced listings ("non-default content"), reducing the incentive to attempt to obtain higher search rankings by manipulation (column 4, lines 15-20). Thus, Littlefield implies that the arrangement of listings is not influenced by the enhanced display fee, making it obvious for this to be done for at least the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant.

As per claim 15, Littlefield discloses that the sponsor subsystem further includes an advertiser interface, wherein said advertiser interface provides for creating said enhanced listing using at least one listing (column 4, lines 24-47).

As per claim 16, Littlefield discloses an advertiser interface providing for the creation of a detailed view to be displayed on a user interface (column 4, lines 24-47; column 6, lines 1-20), a graphic, animation, or movie file being held to constitute a detailed view.

As per claim 17, Littlefield discloses the detailed view being associated with the enhanced listing (ibid., as per claim 16).

As per claim 19, Littlefield discloses the detailed view being associated with the enhanced listing (ibid., as per claim 16), and discloses the enhanced feature, which may be a detailed view, being associated with the enhanced display fee (column 4, lines 1-14; column 6, lines 1-20).

As per claim 20, Littlefield discloses that at least some listings may be associated with per-hit fees (column 4, lines 10-14), and each listing could be associated with a per-hit fee in the event of each listing being an enhanced listing, wherein the enhanced display fee is included in the per-hit fee associated with the enhanced listing. Littlefield does not expressly disclose that the listings displayed by the user subsystem are not displayed in an order that is in accordance with the per-hit fee, but Littlefield has no suggestion that the per-hit fee influences the order of display, Littlefield shows unenhanced and presumably unpaid listings displayed above enhanced listings for which fees would be paid (Figures 1A and 1B), and Littlefield teaches giving advertisers

the ability to compete for attention through enhanced listings, reducing the incentive to attempt to obtain higher search rankings (column 4, lines 14-20), making it obvious for the listings displayed by the user subsystem not to be displayed in an order that is in accordance with the per-hit fee.

As per claim 21, Littlefield discloses the enhanced listings at the tops of both Figures 1A and 1B as being no larger than any of the listings in those responses.

As per claim 22, Littlefield discloses a plurality of enhanced listings, including a first enhanced listing and a second enhanced listing (as in Figures 1A and 1B); and a plurality of enhanced attribute types, said plurality of enhanced attribute types including a first enhanced attribute type and a second enhanced attribute type (column 4, lines 1-14 and 24-41; column 6, lines 1-20), making it an obvious consequence of the selections made by different advertisers for the first enhanced listing to include the first enhanced attribute type and the second enhanced listing to include the second enhanced attribute type.

As per claim 23, Littlefield discloses a plurality of enhanced display fees, the plurality of enhanced display fees including first and second display fees not equal to each other, wherein a first enhanced listing is charged a first enhanced display fee, and a second enhanced listing is charged a second enhanced display fee (column 4, lines 1-9).

As per claim 24, Littlefield discloses a third enhanced listing (e.g., Figures 1A and 1B between them show more than two enhanced listings), and discloses that advertisers can select multiple items from a multiplicity of enhancement attributes

(column 4, lines 1-14 and 24-41; column 6, lines 1-20), which would have as an obvious consequence a third enhanced listing including the first enhanced attribute type and the second enhanced attribute type.

As per claim 30, Littlefield discloses a plurality of fee type attributes, wherein each enhanced listing in a response is associated with at least one fee type attribute, and wherein the enhanced display fee associated with the enhanced listing is influenced by the fee type attribute (column 4, lines 1-14).

As per claim 31, Littlefield discloses that search results in response to a search can comprise more than one web page (column 2, lines 18-30).

As per claim 32, Littlefield discloses charging a per-hit fee, so that at least one listing in a response is associated with a per-hit fee (column 4, lines 10-14).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of official notice. Littlefield does not disclose a per-hit fee amount wherein the enhanced display fee is not included as part of the per-hit fee amount associated with the enhanced listing, but official notice is taken that per-hit fees associated only with placement in or beside search results, not with enhancements, are well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have a per-hit fee amount not associated with the enhanced listing, for at least the obvious advantage of obtaining money for placement of listings that result in hits, even if the listings be unenhanced.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of the post by "Helen," beginning, "CWSApps Listing (with download) for My Deja." Littlefield discloses a plurality of responses, including a first response and second response (e.g., Figures 1A and 1B). Littlefield does not disclose a plurality of priority metrics, but "Helen" teaches a plurality of priority metrics, including a first priority metric and a second priority metric, such that a particular listing could be associated with a first priority metric in a first response (e.g., sorted as high priority because of its relevance score) and associated with a second priority metric in a second response (e.g., sorted as high priority, or at least a particular priority, because of its date or author) (paragraph beginning, "One area where My Deja"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for there to be a plurality of metrics, with the consequences as set forth, for the obvious and implied advantage of sorting results according to what a user considers important.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of Veach (U.S. Patent Application Publication 2004/0267612). Littlefield discloses a plurality of responses, including a first response and second response (e.g., Figures 1A and 1B), but does not disclose that the plurality of listings include a first listing, wherein the first listing is said enhanced listing in said first response, said first listing is included in the second response, and the first listing is not the enhanced listing in the second response. However, Veach teaches enhancing advertisements that may be listings provided by a search engine, where an

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ad may or may not be enhanced depending on various circumstances (paragraphs 105-112), in consequence of which a particular ad/listing could be included in several responses, but only enhanced in one of them. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for a listing to be an enhanced listing in a first response but not in a second response, for the stated advantage of leading to better ads and markets than simply having advertisers pay a fixed surcharge for various formatting options.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of Might et al. (U.S. Patent Application Publication 2003/0177076). As per claim 11, Littlefield discloses creating a plurality of enhanced listings (column 4, lines 1-47; column 6, lines 1-20), but does not expressly disclose a plurality of groups. However, Might enhanced listings (paragraphs 37 and 49) and teaches a plurality of groups which may be included in a response, said plurality of groups including at least a first group and a second group, wherein each listing and each enhanced listing belongs to a group (paragraphs 67-71 and 73), such that a first enhanced listing may belong to a first group and a second enhanced listing may belong to a second group. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for there to have been a plurality of groups as recited, for the obvious advantage of providing the user with information on retailers in different groups that were likely to be relevant to a search, e.g., as taught in Might, groups of retailers matching different

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keywords, different product characteristics selected by a user, different zip codes (within a distance of a given zip code), etc., so as to aid the user in finding the best retailer(s).

As per claim 12, Might further teaches that any number of priority schemes may be applied to the match list (paragraph 71), and in particular mentions prioritizing retailers with enhancements to their listings, retailers whose enhanced listings include price information, and retailers with the best price (ibid.); hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the placement of the listings by the placement heuristic to be influenced by the groups affiliated with the listings in the response, for the obvious and implied advantage of aiding the user in quickly finding the retailers likely to be best from his perspective.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 16 above, and further in view of official notice. Littlefield arguably does not disclose that the detailed view of the enhanced listing requires an affirmative invocation through said user interface before being displayed through the user interface (unless the "click-to-buy" button of column 6, lines 1-20 is regarded as providing a detailed view), but official notice is taken that it is well known to require an affirmative invocation through a user interface before displaying an item such as a graphic, a movie file, etc. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to require such affirmative invocation through the user interface, for at least the obvious advantage of not

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assaulting the user with detailed views from multiple enhanced listings in his search results.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 24 above, and further in view of official notice. Littlefield discloses a plurality of enhanced display fees, the plurality of enhanced display fees including first and second display fees not equal to each other, wherein a first enhanced listing is charged a first enhanced display fee, and a second enhanced listing is charged a second enhanced display fee (column 4, lines 1-9). Littlefield does not expressly disclose that a third enhanced listing is charged the first enhanced display fee and the second enhanced display fee, but official notice is taken that it is well known to charge a customer the fees for first and second products or services when the customer buys both of them. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the third enhanced listing to be charged the first enhanced display fee and the second enhanced display fee, for the obvious advantage of making money by charging advertisers for the various and multiple enhancements they want.

Claims 26, 27, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of Talib et al. (U.S. Patent Application Publication 2001/0044837). As per claim 26, Littlefield does not expressly disclose a category attribute, wherein the request includes the category attribute and wherein the response is influenced by the category attribute, but Talib teaches this (paragraphs 87-96). Hence, it would have been obvious to one of ordinary

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skill in the art of electronic commerce at the time of applicant's invention to include such a category attribute, and have the response influenced by the category attribute included in the request, for the obvious and implied advantage of assisting users in finding results relevant to their needs.

As per claim 27, Talib further teaches a plurality of category attributes, including a first category attribute associated with listings and advertisements (paragraphs 107-111), wherein the fee associated with an advertisement is influenced by the category attribute (paragraph 111). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the plurality of category attributes to include a first category attribute associated with the enhanced listing, and for the enhanced display fee associated with the enhanced listing to be influenced by the category attribute, for the stated advantages that business are willing to pay higher advertising rates to reach users engaged in focused searches, or to have their ads viewed by more people.

As per claim 28, Littlefield does not expressly disclose a geography attribute, wherein the request includes the geography attribute and wherein the response is influenced by the geography attribute, but Talib teaches this (paragraphs 48 and 98-101). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a geography attribute, and have the response influenced by the geography attribute included in the request, for the obvious and implied advantage of assisting users in finding results relevant to their needs.

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As per claim 29, Talib further teaches a plurality of geography attributes, including a first geography attribute associated with listings and advertisements (paragraphs 106, 110, 111, and 130), wherein the fee associated with an advertisement is influenced by a category attribute which may relate to geography (paragraphs 110 and 111). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the plurality of geography attributes to include a first geography attribute associated with the enhanced listing, and for the enhanced display fee associated with the enhanced listing to be influenced by the geography attribute, for the stated advantages that business are willing to pay higher advertising rates to reach users engaged in focused searches, or to have their ads viewed by more people.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 32 above, and further in view of Mangold et al. (U.S. Patent Application 2004/0186769). Littlefield discloses per-hit fees and subscription fees, but does not disclose a variable per-hit fee; however, Mangold teaches variable per-hit fees (paragraphs 25-31). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the per-hit fee to be a variable per-hit fee, for the implied advantage of charging advertiser's according to the value of searchers' clicks, based on the probability that the searchers will actually visit and make purchases.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Mangold as applied to claim 33 above, and further in view of the anonymous article,

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"Intasys Corporation Subsidiaries Mamma.com and Intasys Billing Technologies Comment on Q3 Results Discuss Recent Events," hereinafter "Intasys." Neither Littlefield nor Mangold discloses a number of hits and period of time, wherein the number of hits and period of time influence the variable per-hit fee, but "Intasys" teaches a per-hit fee varying in accordance with a period of time and number of hits (paragraph beginning "Mamma.com's advertisers' return on investment"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for there to be a number of hits and period of time, wherein the number of hits and period of time influence the variable per-hit fee, for the stated advantage of providing added value in the search result placement industry (by not counting bogus or apparently redundant hits).

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of Jha et al. (U.S. Patent Application 2005/0033641). As per claim 35, Littlefield does not disclose a plurality of per-hit fee types and a plurality of fee types (although Littlefield discloses per-hit fees and subscription fees), but it is well known for there to be a plurality of per-hit fee types and a plurality of corresponding fee types, as taught in Jha (paragraph 127). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the system comprise a plurality of per-hit fee types and a plurality of corresponding fee types, for the obvious advantage of arranging payment for display of advertised listings in the most mutually satisfactory way.

As per claim 36, a plurality of listings inherently includes a first listing, and given more than one per-hit fee type, some listings can be associated with more than one per-hit fee type, and these may just as well include the first listing.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 1 above, and further in view of Kanell ("Personal Technology: Bellsouth Putting Yellow Pages Online"). Littlefield does not disclose that the request further comprises a category selection, but Kanell teaches a request also including a category selection (four paragraphs beginning from, "The service is set up to let the user fine-tune the search"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the request to include a category selection, for the stated advantage of letting the user fine-tune the search, and, it is implied, more easily find advertised businesses of most relevance to his preferences.

Claims 39-43

Claims 39, 40, 41, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield et al. (U.S. Patent 6,564,208) in view of official notice. As per claim 39, Littlefield discloses an information distribution system, comprising: a depository of information, said depository including a plurality of listings, said plurality of listings including an enhanced listing, said enhanced listing including an enhanced format attribute (column 4, lines 1-47); and a server configured to receive a plurality of requests and to generate a plurality of responses, wherein each response is generated using at least one request and said depository of information, and wherein said

enhanced listing is associated with an enhanced display fee (column 4, lines 1-14) and is included in at least one response (column 4, lines 42-47; column 5, lines 12-67; Figures 1A and 1B). Littlefield does not expressly disclose that the placement of the enhanced listing is not influenced by the enhanced display fee, but does show sample orderings in which enhanced listings are interspersed with unenhanced listings, unenhanced listings appearing before enhanced listings (Figures 1A and 1B; column 5, lines 12-48); Littlefield also teaches as prior art ordering listings based on expected relevance to a user's search (column 2, lines 6-30), with no teaching that in his own invention, the placement of the displayed listings is influenced by the enhanced display fee; and Littlefield teaches that an advantage of his invention is enabling web page owners to compete for the attention of the users of a search engine through enhanced listings ("non-default content"), reducing the incentive to attempt to obtain higher search rankings by manipulation (column 4, lines 15-20). Thus, Littlefield implies that placement of the listings is not influenced by the enhanced display fee, making it obvious for this to be done for at least the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant.

Littlefield does not expressly disclose that at least one listing is excluded from said response on the basis of said request, but official notice is taken that it is well known for listings to be excluded from search engines' responses to requests based on

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the requests; search engines don't include all known web pages as listings in a response, but exclude pages of apparent low relevance. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for at least one listing to be excluded from said response on the basis of said request, for the obvious advantage of not wasting the user's time with irrelevant listings.

As per claim 40, Littlefield discloses an advertiser interface, wherein said advertiser interface provides for receiving at least one said listing (column 4, lines 24-47).

As per claim 41, Littlefield discloses a plurality of enhanced attributes (column 4, lines 24-41; column 6, lines 1-20) and a plurality of enhanced display fees corresponding to the enhanced attributes (column 4, lines 1-9).

As per claim 42, Littlefield discloses an advertiser interface, the advertiser interface providing for the selection of at least one enhanced attribute (column 4, lines 24-47), and teaches enhanced display fees (column 4, lines 1-9), implying selection of said fees in accordance with the selected enhanced attributes.

As per claim 43, Littlefield discloses a plurality of enhanced attributes, the plurality of enhanced attributes including at least: a font size, a font type, and a sound (column 4, lines 24-41; column 6, lines 1-20).

Claims 44-47 and 49-51

Claims 44, 45, 46, 47, 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield et al. (U.S. Patent 6,564,208). As per claim 44, Littlefield

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discloses a method for transmitting information, comprising: receiving advertising information from an advertiser; (in one alternative) using the advertising information to create a listing associated with the advertiser (column 4, lines 1-55); allowing the advertiser to enhance the display attributes of the listing in exchange for an enhanced display fee (ibid; also column 6, lines 1-20); and displaying the listing with enhanced display attributes on a user interface in response to a request by a user (column 5, lines 12-67). In the alternative, column 4 of Littlefield may be considered as disclosing enhancing an existing listing rather than creating a listing, in which case Littlefield's disclosure at column 1, line 56, through column 2, line 30, discloses receiving advertising information from an advertiser; and using the advertising information to create a listing associated with the advertiser.

Littlefield does not expressly disclose that placement of the listings is not influenced by the display fee, but does show sample placements in which enhanced listings are interspersed with unenhanced listings, unenhanced listings appearing before enhanced listings (Figures 1A and 1B; column 5, lines 12-48); Littlefield also teaches as prior art ordering listings based expected relevance to a user's search (column 2, lines 6-30), with no teaching that in his own invention, the order of the displayed listings is influenced by the display fee; and Littlefield teaches that an advantage of his invention is enabling web page owners to compete for the attention of the users of a search engine through enhanced listings ("non-default content"), reducing the incentive to attempt to obtain higher search rankings by manipulation (column 4, lines 15-20). Thus, Littlefield implies that placement of the listings is not influenced by the display fee,

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making it obvious for this to be done for at least the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant.

As per claim 45, Littlefield discloses associating each listing with a per-hit fee, and, as per claim 46, the enhanced display fee is part of the per-hit fee (column 4, lines 15-20).

As per claim 47, Littlefield discloses displaying a plurality of listings in the response and ordering the listings in accordance with a priority metric associated with each of the listings in the response (column 2, lines 6-17; column 5, lines 12-67; figures 1A and 1B).

As per claim 49, Littlefield discloses enhanced display attributes including at least: a font size, a font type, and a sound (column 4, lines 24-41; column 6, lines 1-20).

As per claim 51, Littlefield does not expressly disclose that the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings, but Littlefield discloses a per-hit fee for enhanced listings (column 4, lines 9-14) only as an alternative to or supplement to a subscription fee for enhancements, and nowhere discloses a per-hit fee for listings without enhancements. Hence, it would have been obvious for the listings in the response not to be displayed in accordance with a per-hit fee that is associated with each of the listings, as an obvious consequence of there being no such per-hit fee.

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Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlefield as applied to claim 45 above, and further in view of Kanell ("Personal Technology: Bellsouth Putting Yellow Pages Online"). Littlefield discloses displaying multiple responses, presumably in response to multiple requests (Figures 1A and 1B; column 5, lines 12-67). Littlefield does not disclose the receiving of multiple requests and the display of multiple responses, wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response; but Kanell teaches a search engine receiving multiple requests and displaying multiple responses (seven paragraphs beginning from, "In a move the company hopes"), and further teaches that a business may not be listed in every category in which it could be listed, because a business has to be paid to be listed in more than one (paragraph beginning, "The service is set up to let"), and discloses businesses paying for enhancements in the online Yellow Pages similar to those in the printed Yellow Pages, where companies can pay for bold-faced listings and large box ads that include more information ads (two paragraphs beginning from, "Just the basics For the moment"). Such an enhancement would not necessarily appear in multiple categories in the printed Yellow Pages; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the enhancement to appear in only one or some categories in the online Yellow Pages, and therefore for the same listing to appear in an enhanced display format in one response without appearing in an enhanced display format in another response, as an obvious consequence of advertisers being unwilling to spend extra money for enhanced

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advertisements in multiple categories, and listing providers seeking to increase revenues by providing different levels of service, with extra payments required for additional enhancements.

Response to Arguments

Applicant's arguments filed July 16, 2007 have been fully considered but they are not persuasive. Applicant argues that Examiner was in error to argue that "Littlefield implies that placement of the listings is not influenced by the enhanced display fee," merely because Littlefield does not affirmatively teach that placement of the listings is influenced by the enhanced display fee. Examiner replies that there is more basis for his position in Littlefield than the mere absence of such an affirmative teaching; notably, Figures 1A and 1B of Littlefield show default and non-default (enhanced) items interspersed, so Littlefield does not envision his system as giving all the high positions to enhanced listings. That does not prove that enhanced display fees play no part in determining the placement of listings, but does help make it plausible that they would not. Furthermore, Examiner's rejections rely on the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant. Different search engines follow different strategies, but a search engine which returns results for which fees are paid in preference to results

which are relevant to the user's query, is likely to be judged unhelpful, to be little used, and therefore to be unable to charge much for advertising.

The Supreme Court has ruled in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007) that the teaching, suggestion or motivation test should not be applied as a rigid and mandatory formula that limits obviousness analysis through a formalistic conception of the words "teaching," "suggestion," and "motivation" or by overemphasis on the importance of published articles and explicit content of issued patents, since market demand, rather than scientific literature, often drives design trends, and granting patent protection to advances that would occur "in the ordinary course" without real innovation retards progress and may, in the case of patents combining previously known elements, deprive prior inventions of their value or utility (1385-1386).

To quote further from *KSR* (at 1386), "[R]igid application of preventative rules that deny fact finders recourse to common sense are neither necessary nor consistent with precedent."

The Court also noted in the *KSR* decision, "[I]f there is design need or market pressure to solve [a] problem, and there are [a] finite number of identified, predictable solutions, [a] person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation."

All of this appears applicable to the case at hand. There is motivation to infer from Littlefield that the placement of listings is not determined by enhanced display fees.

There is also common-sense reason why placement of listings should not be so determined, and there are a finite number of identified predictable solutions (which can be combined in various ways) for determining the placement of listings, and there is design need or market pressure to maintain a reputation for integrity of search results, and therefore for not placing listings according to enhanced display fees.

With regard to claim 8, Applicant argues that "Helen's" newsgroup post does not disclose "My Deja" returning more than a single set of results, which can be ordered according to several selected priority metrics. Examiner replies that Littlefield does disclose a plurality of responses. It is the combination of Littlefield and "Helen" which is held to make claim 8 obvious for the motivation stated in the rejection. Once again, the *KSR* precedent is considered relevant.

Examiner has used different art as a secondary reference to reject claims 11 and 12, in response to Applicant's amendment, making Applicant's argument moot.

Regarding claim 20, Littlefield discloses several ways that a search engine may charge advertisers (column 4, lines 1-14), including a per-hit fee (click-through fee) "Instead of or in addition to a subscription fee for associating non-default items [enhancements to listings] with search result listings." This, at the least, makes it obvious for the per-hit fee to be distinct from the enhancement fee, and, as set forth above, there are advantages and motivations for the listings to be displayed on some other basis (e.g., apparent relevance to a search query), not a per-hit fee.

Regarding claim 30, Examiner reiterates that Littlefield discloses what claim 30 recites: "The amount charged by the search engine controller may vary based on a

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variety of factors, including the size and type of the non-default items that web page owners desire to associate with the search result listings for their pages" (column 4, lines 6-9). Applicant argues that nowhere does Littlefield teach or suggest that click-through fees may be influenced by Littlefield's subscription fee [for associating enhancements with listings]. Examiner replies that this is not a limitation of claim 30, and therefore irrelevant.

The common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stone et al. (U.S. Patent Application Publication 2007/0094044) disclose a web based health and wellness resource locator (the filing date is questionable, preceding that of the present application, but not that of a previous application of which the present application is a continuation-in-part).

Weidlich ("Search Engine Marketing Revving up") discloses, inter alia, various factors for determining how relevant a Web page is to a query.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas D. Rosen

NICHOLAS D. ROSEN
PRIMARY EXAMINER

October 11, 2007